

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOUGLAS R. CARON,

Plaintiff,

v.

TD AMERITRADE, INC., et al.,

Defendants.

1:19-cv-09015-AJN-GWG

DECLARATION OF
GREGG M. MASHBERG IN
SUPPORT OF THE DTCC
DEFENDANTS' MOTION TO
DISMISS

GREGG M. MASHBERG, declares, under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a member of the bar of this Court and am a member of the firm Proskauer Rose LLP, counsel for Defendants The Depository Trust & Clearing Corporation (“DTCC”), The Depository Trust Company (“DTC”), and Cede & Co. (collectively, the “DTCC Defendants”). I am fully familiar with the facts set forth herein.

2. I submit this declaration in support of the DTCC Defendants’ Motion to Dismiss.

3. Attached as **Exhibit A** is a true and correct copy of the Depository Trust Company’s “Special Alert Regarding Bancorp International Group, Inc.,” dated August 16, 2005.

4. Attached as **Exhibit B** is a true and correct copy of the Complaint filed in *SEC v. Pino*, Case No. 08-cv-00353 (MHM) (D. Ariz.), dated February 25, 2008.

5. Attached as **Exhibit C** is a true and correct copy of FINRA’s “Special Notice to Members” regarding the suspension of trading in Bancorp International Group, Inc., dated September 2005.

6. Attached as **Exhibit D** is a true and correct copy of a submission the Plaintiff filed in FINRA Case No. 14-03194, dated May 8, 2015.

7. Attached as **Exhibit E** is a true and correct copy of a submission the Plaintiff filed in FINRA Case No. 14-03194, dated October 19, 2015.

8. Attached as **Exhibit F** is a true and correct copy of the Notice of Small Claim the Plaintiff filed in the District Court for the State of Washington, Whatcom County, Small Claim No. SC11-604, dated December 9, 2011.

9. Attached as **Exhibit G** are true and correct copies of the Judgment and Order Granting Defendant's Motion to Compel Arbitration and Dismiss Pursuant to CLRJ 12(b)(1) entered by the District Court for the State of Washington, Whatcom County, Small Claim No. SC11-604, dated March 2, 2012.

10. Attached as **Exhibit H** is a true and correct copy of the Order Affirming District Court and Striking Appellant's Supplementation of the Record on Appeal entered by the Superior Court of the State of Washington, Whatcom County, Case No. 12-2-00689-6, dated May 11, 2012.

11. Attached as **Exhibit I** is a true and correct copy of the Complaint for Replevin the Plaintiff filed in the Superior Court of the State of Washington, Whatcom County, Case No. 12-2-01482-1, dated June 4, 2012.

12. Attached as **Exhibit J** is a true and correct copy of the Order Granting Defendant's Motion to Compel Arbitration and Dismiss entered by the Superior Court of the State of Washington, Whatcom County, Case No. 12-2-01482-1, dated July 5, 2012.

13. Attached as **Exhibit K** is a true and correct copy of the statement of claim the Plaintiff filed on October 16, 2014 in *Caron v. TD Ameritrade, Inc.*, Case No. 14-30194 (FINRA).

14. Attached as **Exhibit L** is a true and correct copy of the arbitration award in *Caron v. TD Ameritrade, Inc.*, Case No. 14-03194 (FINRA), dated September 8, 2016.

15. Attached as **Exhibit M** is a true and correct copy of the SEC's June 4, 2003 Order, SEC Release No. 34-47978, Granting Approval of [DTC's] Proposed Rule Change Concerning Requests for Withdrawal of Certificates by Issuers.

16. Attached as **Exhibit N** is a true and correct copy of the Transcript Opinion in *Ioan Micula, et al. v. The Government of Romania, et al.*, No. 15-MC-107 (LAP) (S.D.N.Y. Jan. 21, 2016).

17. Attached as **Exhibit O** is a true and correct copy of the SEC's December 6, 2016 Order, SEC Release No. 34-79488, Granting Approval of [DTC's] Proposed Rule Change to Impose Deposit Chills and Global Locks and Provide Fair Procedures to issuers.

18. Attached as **Exhibit P** are true and correct copies of the submission and exhibit the Plaintiff filed in FINRA Case No. 14-03194, dated May 18, 2015.

19. Attached as **Exhibit Q** are true and correct copies of the unreported and unpublished decisions cited in The DTCC Defendants' Memorandum of Law in Support of Their Motion to Dismiss.

Dated: January 13, 2020
New York, New York

/s/ Gregg M. Mashberg
Gregg M. Mashberg